

**A Berjaya Land Bhd v Wong Chee Hie & Ors**

HIGH COURT (KUALA LUMPUR) — SUIT NO D22 NCC-929 OF  
2010

**B** VARGHESE GEORGE JC  
25 MARCH 2011

**C** *Legal Profession — Disqualification — Conflict of interest — Defendants applied to disqualify legal firm acting for plaintiff — Defendants' affidavit exhibited emails between plaintiff and certain solicitors of legal firm — Allegation that emails showed action plan against defendants in furtherance of illegal purpose — Solicitors concerned proposed to be called as witnesses — Whether for that reason firm as a whole should be disqualified — Whether defendants shown nexus or conflict of interest between rest of the firm and contesting parties — Whether firm able to maintain professional independence in acting for plaintiff*

**E** The plaintiff and the defendants were involved in a tussle to control the management of a company, APSB, in connection with which the defendants had filed two court actions against the plaintiff and some others. An affidavit filed for the defendants in one of those actions had exhibited some emails, one of which ('the said email') had been sent to the plaintiff by a solicitor in the legal firm that represented the plaintiff both in those actions as well as in the instant action, Messrs Lee Hishammuddin Allen & Gledhill ('LHAG'). The said email had been copied to, among others, two other solicitors in LHAG. The plaintiff claimed all the emails were confidential and privileged communication under s 126 of the Evidence Act 1950 and that the defendants had wrongfully obtained, used and disseminated them to cause the plaintiff harm. By the instant action, for alleged breach of confidentiality, the plaintiff prayed for orders to restrain the defendants from further disseminating the contents of the emails and for damages. Days before the instant action came up for trial, the defendants filed an application (encl 33) to disqualify LHAG from continuing to act for the plaintiff in the matter. The defendants claimed the said email was not protected by privilege as it allegedly evidenced an 'action plan in furtherance of an illegal purpose' by the plaintiff and nine others to remove the defendants from APSB and take full control of the company. The defendants said the three solicitors in LHAG who had personal knowledge about the said email, by way of giving legal advice or otherwise, allegedly played a part in the execution of the plaintiff's 'action plan'. The defendants said the three solicitors were potentially material witnesses in the instant action to shed light on the alleged 'action plan' and, for that reason, LHAG as a firm would likely be

embarrassed, put in a conflict of interest situation and/or be rendered unable to maintain its professional independence in acting for the plaintiff.

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**Held**, dismissing encl 33 with costs:

- (1) The fact that some particular solicitor from the firm might be called as a witness did not conflict the whole firm. Neither the contents of the email nor the submission of the defendants established any nexus between any other members of LHAG and the contesting parties. This essential requirement had not been satisfied by the defendants (see paras 18, 22 & 24).
- (2) Nothing had been shown from the email or otherwise, that LHAG would not be able to maintain its professional independence or that by continuing to act for the plaintiff the firm would be placed in a potentially embarrassing situation. The statement of defence, except for a vague assertion, was bereft of details or particulars of any wrongdoing or matter in conflict involving the whole firm of LHAG (see paras 22 & 23).
- (3) The court was not convinced the email was issued in furtherance of an illegal purpose. The choice, or use, of words in the said email to describe the 'strategy' to be adopted did not detract from the essence of the contents of the email — a legal opinion in the midst of litigation or in anticipation of further litigation (see paras 25 & 21).
- (4) The defendants did not raise any objections to LHAG representing the plaintiff in the earlier two suits or in the other interlocutory proceedings in the instant action. Their delay in objecting to LHAG at the earliest possible opportunity had to be held against them. The explanation proffered for the delay in raising the objection was not reasonable or acceptable (see paras 9 & 26).

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**[Bahasa Malaysia summary]**

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Plaintif dan defendan telah terlibat dalam perebutan untuk mengawal pengurusan syarikat, APSB, berhubung yang mana defendan telah memfailkan dua tindakan mahkamah terhadap plaintiff dan beberapa orang lain. Afidavit yang difailkan terhadap defendan dalam salah satu tindakan tersebut telah mengekshibitkan beberapa e-mel ('e-mel tersebut'), salah satunya telah dihantar kepada plaintiff oleh seorang peguam di firma guaman yang mewakili plaintiff dalam kedua-dua tindakan mereka serta dalam tindakan ini, Tetuan Lee Hishammuddin Allen & Gledhill ('LHAG'). E-mel tersebut turut dihantar kepada, antara lain, dua peguam lain dalam LHAG. Plaintiff mendakwa kesemua emel adalah rahsia dan adalah komunikasi istimewa di bawah s 126 Akta Keterangan 1950 dan bahawa defendan-defendan telah memperolehnya secara salah, menggunakan dan menyebarkan untuk menyebabkan kemudaratannya kepada plaintiff. Dalam tindakan ini, bagi pelanggaran kerahsiaan, plaintiff memohon perintah-perintah untuk

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- A menghalang defendan daripada terus menyebarkan kandungan email dan bagi ganti rugi. Beberapa hari sebelum tindakan ini tiba untuk perbicaraan, defendan memfailkan permohonan ('lampiran 33') untuk membatalkan LHAG daripada terus bertindak plaintif dalam perkara tersebut. Defendan mendakwa e-mel tersebut tidak dilindungi oleh keistimewaan kerana ia
- B didakwa membuktikan 'action plan in furtherance of an illegal purpose' oleh plaintif dan sembilan yang lain untuk mengeluarkan defendan daripada APSB dan mengambil kawalan penuh syarikat. Defendan-defendan menghujahkan bahawa tiga peguam dalam LHAG mempunyai pengetahuan peribadi tentang e-mel tersebut, dengan cara memberi nasihat undang-undang atau selainnya,
- C didakwa memainkan peranan dalam melaksanakan 'action plan' plaintif. Defendan mendakwa bahawa tiga peguamcara tersebut adalah saksi material berpotensi dalam tindakan ini, untuk memberi penerangan tentang 'action plan' yang didakwa, dan oleh kerana itu, LHAG, sebagai sebuah firma mungkin akan malu, berada dalam situasi konflik kepentingan dan/atau
- D dikatakan tidak dapat mengekalkan kebebasan profesional dalam bertindak bagi plaintif.

**Diputuskan,** menolak lampiran 33 dengan kos:

- E (1) Fakta bahawa beberapa peguam cara tertentu dari firma mungkin akan dipanggil sebagai saksi tidak berkonflik dengan keseluruhan firma. Baik kandungan emel mahupun hujahan defendan tidak mewujudkan sebarang pertalian antara mana-mana ahli LHAG yang dan pihak-pihak yang bertanding. Keperluan penting ini tidak dipenuhi oleh defendan (lihat perenggan 18, 22 & 24).
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- G (2) Tiada apa-apa jua yang telah ditunjukkan daripada emel atau sebaliknya, bahawa LHAG tidak mampu untuk mengekalkan kebebasan profesionalnya atau dengan terus bertindak bagi pihak plaintif, firma tersebut akan diletakkan dalam situasi yang berpotensi memalukan. Pernyataan pembelaan, kecuali bagi pengataan yang tidak jelas, ketandusan maklumat atau butir-butir mengenai sebarang salah laku atau perkara yang berkonflik melibatkan seluruh firma LHAG (lihat perenggan 22 & 23).
- H (3) Mahkamah tidak yakin bahawa emel tersebut telah dikeluarkan sebagai pelaksanaan satu tujuan yang menyalahi undang-undang. Pemilihan, atau penggunaan perkataan dalam emel tersebut untuk menggambarkan 'strategi' yang diguna pakai tidak menyimpang daripada intipati kandungan emel tersebut—pendapat undang-undang di tengah-tengah litigasi atau jangkaan guaman selanjutnya (lihat Perenggan 25 & 21).
- I (4) Defendan tidak membangkitkan sebarang bantahan terhadap LHAG mewakili plaintif dalam dua saman lebih awal atau dalam prosiding interlokutori dalam tindakan ini. Kelewatan mereka dalam membantah LHAG pada peluang terawal berpaling kepada mereka. Penjelasan yang

diberikan bagi kelewatan dalam membangkitkan bantahan tersebut adalah tidak munasabah atau tidak boleh diterima (lihat perenggan 9 & 26).]

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### Notes

For a case on conflict of interest, see 9 *Mallal's Digest* (4th Ed, 2010 Reissue) para 1479.

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### Cases referred to

*Dr Trilochan Kaur d/o Mohan Singh v The Malaysian Dental Council & Anor* [2009] 4 MLJ 244, HC (refd)

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*Lee Kam Sun v Ho San Lin* [1999] 4 MLJ 509; [1999] 4 CLJ 507, HC (refd)

*Mirza Muhammad Tariq Beg bin Miza HH Beg v Margaret Low Saw Lui & Ors* [2009] 4 MLJ 671, CA (refd)

*Quah Poh Keat & Ors v Ranjit Singh a/l Taram Singh* [2009] 4 MLJ 293, CA (refd)

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*Shanker RP Asnani v Stanley Eddy* [2004] 3 AMR 579, HC (folld)

*Sykt Pengangkutan Sakti Sdn Bhd v Tan Joo Khing t/a Bengkel Sen Tak* [1997] 5 MLJ 705, HC (refd)

*Tan Kim Hor & Ors v Tang Heng Chew & Ors* [2009] 4 MLJ 358; [2004] 5 AMR 163, HC (folld)

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*Wee Choo Keong v PP* [1990] 2 MLJ 239, HC (refd)

### Legislation referred to

Evidence Act 1950 ss 120, 126, 126(1)(a)

Legal Profession (Practice and Etiquette) Rules 1978 rr 4, 5, 28, 28(a)

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*Bahari Yeow (CL Foong with him) (Lee Hishamuddin Allen & Gledhill) for the plaintiff.*

*L Thilaga (T Reena with her) (Megat Najmuddin Leong & Co) for the defendants.*

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### Varghese George:

#### GROUND OF DECISION ON ENCL 33

[1] This action had been fixed for full trial on 29 November 2010 and 30 November 2010. On 22 November 2010 at the final case management before trial, counsel representing the defendants informed the court that they would be filing, among others, an application to disqualify the legal firm of Messrs Lee Hishamuddin Allen & Gledhill (*LHAG*) from acting for the plaintiff in this matter.

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[2] On 23 November 2010 solicitors for the defendants filed *encl 33* for an order from court to disqualify *LHAG* from acting or continuing to act for the plaintiff, and as basis for their application referred to r 4 and/or r 5 and/or r

- A** 28(a) of the Legal Profession (Practice and Etiquette) Rules 1978 and the inherent jurisdiction of the court to grant such an order. The brief grounds in support of their application, as set out in the summons in chambers were as follows:
- B** (i) The Plaintiff's present action before this Court is for breach of confidence wherein the Plaintiff is alleging that the Defendants have unlawfully used documents belonging to the Plaintiff, including an email written by Ms Woon Huei Chin and/or Mr. Rosli Dahlan and/or Mr. G. Vijay Kumar Mated 25.11.2009 ('the said email') (all of whom are solicitors from Messrs Lee Hishammuddin Allen & Gledhill) to the Plaintiff.
- C** (ii) The Plaintiff is alleging that the said email from Messrs Lee Hishammuddin Allen & Gledhill addressed to the Plaintiff qualifies as confidential information and/or is privileged communication under Section 126 of the Evidence Act 1950. This is disputed by the Defendants.
- D** (iii) It is the Defendants' pleaded case that the said email is not confidential information (or does not contain confidential information) and it is also not privileged communication because the email was between persons in furtherance of an illegal purpose.
- E** (iv) The email is evidence that the Plaintiff and nine (9) others have planned, schemed and conspired to remove the Defendants from Absolute Prestige Sdn Bhd and to take full control of Absolute Prestige Sdn Bhd. It therefore relates to material facts in this case.
- F** (v) There is likelihood that Ms. Woon Huei Chin and/or Mr. Rosli Dahlan and/or Mr. G. Vijay Kumar from Messrs. Lee Hishammuddin Allen & Gledhill may be called as potential and material witnesses in the present action.
- (vi) Messrs Lee Hishammuddin Allen & Gledhill would be in a difficult situation to maintain their professional independence and would be put in a potentially embarrassing situation and/or in a position of conflict of interest.

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#### BACKGROUND

- H** [3] The plaintiff and the defendants had been involved in a tussle for the management control of one Absolute Prestige Sdn Bhd (APSB). The defendants had initiated two court proceedings against the plaintiff and certain others, namely Suit D-22NCC-83 of 2009 and Suit S22-21 of 2010. The first of the two court proceedings had been dismissed with costs sometime ago and lately the second action was also struck out for being frivolous, vexatious and an abuse of the process of court.
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[4] In the second of the proceedings, Suit S 22-21 of 2001, there had surfaced:

- (a) a series of emails of 13 September 2009 and 14 September 2009;

(b) an email of 25 November 2009; and

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(c) another email of 28 December 2009.

The said emails had been exhibited in an affidavit filed on behalf of the defendants. The plaintiff was livid as they claimed that these emails were wrongfully obtained, used and disseminated by the defendants to cause harm to the plaintiff. The plaintiff claimed that the contents of the emails were confidential and privileged communication.

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[5] The plaintiff then commenced this current proceedings before the court based on a cause of action against the defendants for alleged breach of confidentiality by wrongfully using and disseminating the said three emails. The plaintiff, apart from the restraining orders to prevent further disclosure of the confidential information, sought also in this action damages, including aggravated and exemplary damages to be ordered against the defendants.

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[6] It is pertinent to make a note here of the fact that the defendants had prior to the application in encl 33, made an application to this court vide encl 9 to strike out the writ and the statement of claim, principally on the ground that the plaintiff was prevented pursuant to the doctrine of 'res judicata' from pursuing this action. After hearing parties, I had on 2 July 2010 dismissed the defendants' application to strike out the suit. The defendants lodged an appeal to the Court of Appeal against the said decisions but apparently, it had been subsequently withdrawn considering that an early date had been fixed for the disposal of the substantive action (ie on 29 November 2010 and 30 November 2010).

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[7] Also before encl 33 was filed by the defendants, I had dealt with a plaintiff's inter parties application for an interim injunction and granted the same on 3 September 2010 (encl 5) against the defendants.

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[8] There was also another interlocutory application filed by the plaintiff (encl 12) for a 'confidentiality order' to be recorded in respect of the said three emails. However since the three emails had already featured in relation to Suit No S 22–21 of 2001, I only made a limited order on 28 October 2010 that the three emails need not be produced during the normal discovery process but be produced to the court during trial. In any event there was already in place, as stated above, binding orders on the defendants restraining them from further use or dissemination of the said emails or of their content to any other person in any manner.

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[9] The purpose of tracing the above developments in his file itself, was to put emphasis on the fact that the defendants had not formally raised any objections to the firm of LHAG representing the plaintiff, all this while. That

- A was also the case in the other substantive proceedings — D-24-NCC-83 of 2009 and S 22–21 of 2001 where the plaintiff here, who was defendant (or one of them) in those proceedings, had been all along represented by LHAG.

## ENCLOSURE 33

- B [10] This application, of the defendants by encl 33 was to disqualify the firm, of LHAG from acting for the plaintiff, and not merely one or more advocates and solicitors in this firm (who could be potential witnesses) from representing the plaintiff. The defendants arguments in this regard revolved around the second of the three emails.
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- D This was the email of 25 November 2009 emanating from one Ms Woon Huei Chin — a solicitor from the firm of LHAG, where the recipient of the email was one Derek Chin of the plaintiff. The email had been copied to many others, including to Rosli Dahlah and one G Vijay Kumar — also solicitors in the firm of LHAG.

## THE DEFENDANTS' CONTENTION

- E [11] In respect of the contents of the email in question, it was the defendants' submission, that the terminology or words used such as:

(a) to force about a new set of facts;

(b) to give you an upper hand; and

- F (c) to choke or force out Pico and SM (the first defendant)

disclosed that there was an action plan or series of action plans to take full control of Absolute Prestige Sdn Bhd and cause detriment and economic duress or coercion on the defendants.

- G In respect of the action plan, the defendants argued that the firm of LHAG — by the fact of the involvement of the said three solicitors of the firm — ostensibly giving legal advice coming from Woon and Rosli with the knowledge of G Vijaya Kumar — were an active party in carrying out the plan and hence conflicted.
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- I [12] It was further argued for the defendants that the 'action plan' alluded to in the second email was 'in furtherance of an illegal purpose' and that neither LHAG nor the writer of the email could invoke the privilege attached to professional communication available to an advocate and solicitor in ordinary course of events under s 120 of the Evidence Act 1950. This was because any communication in furtherance of an illegal purpose was not so protected as it fell within the exception found in s 126(1)(a) of the Evidence Act 1950.

It was also counsel for the defendants' submission that at this stage — the

defendant need only show that the ‘communication’ in question had the colour of being one in furtherance of an illegal purpose and the defendants should not be denied the right to put the three solicitors of LHAG on the stand during trial to extract relevant facts to establish that the action plan was in furtherance of an illegal purpose.

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[13] It is also pertinent to point out that at the date of the hearing of encl 33, from amongst the said three solicitors of LHAG whose names featured in the second email, the defendants had, only taken out one subpoena — that is, against Woon Huei Chin in any event. The plaintiff had, however, immediately upon service of the said subpoena made an application vide encl 41 (still pending) to set aside the said subpoena.

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#### THE COURT’S EVALUATION

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[14] It was clear to me, from the long list of authorities cited by both parties, (and there was no dispute between the parties on this), that the principles of law applicable on the issue before the court could be summarised as follows:

- (a) the right to be represented by a particular advocate and solicitors is not an absolute right;
- (b) lawyers should not act as counsel and witness in the same proceedings;
- (c) the court has inherent powers or authority to disqualify a particular advocate and solicitor from appearing for a particular party — normally where it is likely that the particular advocate and solicitor is likely be called as a witness in support of a material and disputed question of fact, that is, where the advocate and solicitor does not in the first place willingly give up his brief (r 28 of the Legal Profession (Practice and Etiquette) Rules 1978);
- (d) by r 4 of the same Practice and Etiquette Rules, an advocate and solicitor should not accept a brief if he knows or has reason to believe that *his professional conduct is likely to be impugned*; and
- (e) by r 5 of the same Practice and Etiquette Rules, an advocate should decline a brief if it is difficult for him to maintain his *professional independence*, or his further acting for that client would be *incompatible with the best interest of justice*.

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It was also agreed by both parties that the intervention of the court in appropriate cases as above was justified under the court’s inherent powers.

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[15] However the question that calls for determination in encl 33 is not whether Woon, Roslan or G Vijaya Kumar is to be disqualified, but based on the second email and its contents, whether the firm of LHAG — that is, all of

A the solicitors in LHAG or the firm as whole — be barred from representing the plaintiff in this action on account of the contents of the second email.

B There was no doubt that the law had recognised that a *disqualification* that may be ordered by the court *could extend to the whole firm* (cases *Sykt Pengangkutan Sakti Sdn Bhd v Tan Joo Khing t/a Bengkel Sen Tak* [1997] 5 MLJ 705; *Dr Trilochan Kaur d/o Mohan Singh v The Malaysian Dental Council & Anor* [2009] 4 MLJ 244; *Lee Kam Sun v Ho San Lin* [1999] 4 MLJ 509; [1999] 4 CLJ 507; *Quah Poh Keat & Ors v Ranjit Singh all Taram Singh* [2009] 4 MLJ 293) and not merely individual advocates; and solicitors.

C [16] It should be however also noted that even in *Quah Poh Keat & Ors v Ranjit Singh all Taram Singh* (strongly relied on by the defendants) the test to be applied, according to Suriyadi JCA delivering the judgment of the Court of Appeal, was to the following effect:

D Whether the firm was able to maintain its professional independence or would it be put in a potentially embarrassing situation on the basis of a conflict of interest.

That question was therefore to be determined on the facts of each individual case.

E [17] In *Quah Poh Keat & Ors*, the involvement of the two solicitors was so intertwined with the decision to dismiss or terminate the plaintiff/respondent's service. One solicitor had attended an exco meeting where the decision was made to terminate the plaintiff/respondent's service, and the other solicitor had in fact met the plaintiff/respondent to deliver an ultimatum to the plaintiff/respondent to leave. There on the particular facts of that case, the court held that the material *professional independence of the legal would become suspect, or it would become embarrassing to the firm as a whole* since it involved a serving partner of the firm who delivered the ultimatum.

G [18] Further, the cases have also adverted to the requirement that if the whole firm was to be disqualified *there must be shown to exist some nexus or conflict of interest that existed between the other solicitors from the firm and the defendants* as observed by Lau Bee Lan JC (as she then was) in *Shanker RP Asnani v Stanley Eddy* [2004] 3 AMR 579. In *Tan Kim Hor & Ors vs Tang Heng Chew & Ors* [2004] 5 AMR 163, Zulkefli Ahmad Makinudin J (as he then was) noted that to disqualify a firm, it must be shown that the firm as a whole was in a position of conflict.

H I The fact that some particular solicitor from the firm might be called as a witness does not in my view conflict the whole firm.

[19] Such a nexus with the other members of the firms was, in my assessment of the cases was, clearly evident in the following cases and formed the operative

reason in my assessment, for the firms in those case's also being disqualified: A

- (a) in *Syarikat Pengangkutan Sakti Sdn Bhd* — it involved a one partner firm and the partner was directly a party to a negotiation with the defendant; B
- (b) in *Dr Trilochan Kaur's* case — it was expressly reasoned out there that any other person from the firm would still be unable to maintain the very same required degree of professional independence; and
- (c) in *Lee Kam Sun* — James Foong J (as he then was) specifically identified the reason why the disqualification was extended to the whole firm. In His Lordship's words — 'the relationship of the parties and legal assistants within the same firm was too close for comfort to ensure that a 'conflict of interest' would not arise'. C

[20] Accordingly, it turns on the facts of each, case — whether the disqualification should be extended to the whole firm at all. A disqualification of the firm ought to be allowed only if it is proven to the satisfaction of the court that: D

- (a) the firm would not be able to maintain its professional independence, and E
- (b) there is a nexus or conflict of interest shown between other members of the firm and the contesting parties (the plaintiff and the defendant).

[21] I have examined the second email — based on which the defendants seek to bar the firm of LHAG and all its solicitors from representing the plaintiff. F

The contents of the second email on a critical examination bears out, in my view, the plaintiff's submission that it was merely a legal advice or opinion as would be normally given by a legal firm with regard to strategic steps to be taken or to be forewarned about in the interest of their client, the plaintiff. The choice, or use of words, to describe the 'strategy' to be adopted — does not in my view detract from the essence of the contents of the second email — *a legal opinion in the midst of litigation or in anticipation of further litigation.* G H

[22] Moreover, *neither the contents of the email nor the submission of counsel for the defendants did establish any nexus between any other members of the firm and the contesting parties.* Ms Woon, Rosli and G Vijay Kumar are not the ones prosecuting his case before this court. The question naturally would be, then: 'Why should the firm be disqualified?' Or, 'Are there grounds to disqualify the whole firm?'. I

Nothing has been shown to me, on the email or, otherwise, that the firm of

A LHAG *would not* be able to maintain its professional independence or/that by continuing to act for the plaintiff in this action, it would place the firm in a potentially embarrassing situation.

I would therefore prefer the conclusion reached in *Shanker RP Asnani and Tan Kim Hor & Ors* to apply in this case.

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[23] One should not also lose sight of the context of this action in any case. This was a plaintiff's action for breach of confidentiality against the defendants, and not the defendants' action based on some alleged conspiracy that had been occasioned on the defendants by the plaintiff and/or in collusion with LHAG. The statement of defence filed by the defendants, except for a vague assertion, is bereft of any details or particulars of any wrongdoing or matter in conflict involving the whole firm of LHAG. By his own admission, counsel for the defendants agreed that the defendants were still in search of any such evidence. However, he argued, LHAG as a firm should be excluded to allow the defendants an opportunity to obtain such evidence.

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[24] If strong and persuasive evidence is required to even disqualify a particular advocate and solicitor where he is likely to be called as a witness in respect of a material and disputed question of fact, (see case of *Mirza Muhammad Tariq Beg bin Miza HH Beg v Margaret Low Saw Lui & Ors* [2009] 4 MLJ 671; and *Wee Choo Keong v Public Prosecutor* [1990] 2 MLJ 239) what more would it be when the intention is to disqualify the whole firm from acting for a particular client as was the case here. As noted above, this has to be determined on the particular facts of each case and only allowed if a *nexus between the rest of the firm and the contesting parties* are clearly demonstrated. This essential requirement has not been satisfied by the defendants where the foundation of the application is based on surmises and conjectures in any event.

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[25] On a further reading of the second email — I am also not convinced in any way that the email was issued *in furtherance of an illegal purpose* as argued for by the defendants. For purposes of this application, I do not have to make a ruling as to the professional privilege attached to the said second email. I do not wish to pre-empt full arguments to be made by the respective parties in that respects when encl 41 (application of the plaintiff to set aside the subpoena taken out compelling Ms Woon to give evidence) is heard and disposed.

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[26] One final word about the defendants' conduct, namely the defendants' delay in raising the objection as to LHAG's position as a firm to act for the plaintiff promptly in the earlier two suits or in the other interlocutory proceedings within this action itself. I hold that the explanation proffered by the defendants for this delay was not reasonable or acceptable. Further, such failure to raise an objection timeously should not be dismissed as totally

irrelevant in the determination of an application in the nature of encl 33 here. (See the observations of Zulkefli Makinudin J in the High Court in *Tan Kim Hor & Ors*). The defendants' delay in taking the objection to LHAG at the earliest possible opportunity has also therefore to be held against them. A

[27] Accordingly, the defendants' application in encl 33 is disallowed with costs. B

The defendants were ordered to pay the plaintiff fixed costs of RM3,000.

[28] The file was referred to the SAR for case management to fix a date for the disposal of encl 41 and to re-fix trial dates for the substantive action. C

*Enclosure 33 dismissed with costs.*

Reported by Ashok Kumar D

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